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SEA

SERVICE DATE – MARCH 13, 2006

**SURFACE TRANSPORTATION BOARD**  
WASHINGTON, DC 20423

**ENVIRONMENTAL ASSESSMENT**

**STB DOCKET NO. AB-6 (Sub-No. 433X)**

**BNSF Railway Company – Abandonment Exemption –  
in Clay and Norman Counties, MN**

**BACKGROUND**

In this proceeding, BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152.50 seeking exemption from the requirements of 49 U.S.C. 10903 in connection with the abandonment of an approximately 5.4-mile line of railroad in Clay and Norman Counties, Minnesota. The rail line extends between BNSF milepost 15.60 near Georgetown and BNSF milepost 21.00 near Perley. A map depicting the rail line in relationship to the area served is appended to the Environmental Assessment (EA). If the notice becomes effective, the railroad will be able to salvage track, ties and other railroad appurtenances and dispose of the right-of-way.

**ENVIRONMENTAL REVIEW**

BNSF submitted an environmental report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. BNSF served the environmental report on a number of appropriate Federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 CFR 1105.7(b)].<sup>1</sup> The Board's Section of Environmental Analysis (SEA) has reviewed and investigated the record in this proceeding.

According to BNSF, no local traffic has moved on the line for at least two years and there is no overhead traffic handled on the line to be rerouted. Accordingly, the proposed abandonment would not adversely impact the development, use and transportation of energy resources or recyclable commodities; transportation of ozone-

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<sup>1</sup> The railroad's environmental and historic reports are available for viewing on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov) by going to "E-Library," selecting "Filings," and then conducting a search for AB-6 (Sub-No. 433X).

depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

BNSF states that the proposed salvage activities may include the removal of rail, crossties, bridges, and structures. The proposed abandonment would also allow for the elimination of six public roadway crossings and three private roadway crossings.

The U.S. Environmental Protection Agency's Region 5 (USEPA) has indicated that the proposed project is located in the Special Flood Hazard Area of the Red River and a Clean Water Act, Section 402 permit is required. Therefore, USEPA recommends that BNSF consult with the Minnesota Pollution Control Agency (MPCA) regarding the Section 402 permit, as well as concerns related to Section 404 of the Clean Water Act. BNSF consulted with the MPCA, and the MPCA submitted comments that are addressed below.

USEPA also stated that wood treated with creosote should be buried in a non-hazardous waste landfill unless otherwise required by the State of Minnesota, pursuant to the Rebuttable Presumption Against Registration under the Federal Insecticide, Fungicide, and Rodenticide Act. USEPA also indicated that if rail steel, electrical and signal housings, bridge work and other materials are to be removed from the proposed project site, recycling of these materials should be addressed and documented. To address the concerns raised by USEPA, we recommend that a condition be imposed requiring BNSF to contact USEPA prior to commencement of any salvage activities on this project regarding removal and salvage methods.

The MPCA reviewed the proposed project and recommended a number of mitigation measures. To avoid possible impacts to area streams, rivers and wetlands from erosion and stormwater runoff, MPCA recommended that BNSF: 1) mulch, seed, and/or sod during salvage activities to establish permanent ground cover and stabilize soils; 2) develop a site erosion plan to prevent sediment runoff; and 3) pursuant to the Clean Water Act, apply for a Section 402 National Pollutant Discharge Elimination System Permit (NPDES) if the proposed project would disturb one or more acres of land. Accordingly, we recommend that a condition be imposed requiring BNSF to contact the MPCA prior to commencement of any salvage activities on this project concerning erosion and stormwater runoff mitigation practices to be utilized during salvage activities. To ensure appropriate consideration of the NPDES requirements, we also recommend that a condition be imposed requiring BNSF to consult with MPCA prior to commencement of any salvage activities and to comply with the reasonable NPDES requirements.

MPCA also expressed concerns regarding salvage and disposal of the line and recommended that: 1) any removed railroad ties be reused or disposed of in accordance with state rules for disposal of solid and hazardous waste and 2) all other demolition debris be disposed of in a permitted Demolition Debris Land Disposal Facility pursuant to Minnesota Rules 7035.2825. Finally, MPCA recommends an inspection and evaluation of any maintenance yards, switching areas or other such facilities in the

project area for possible oil spills. In the event a release is discovered, MPCA stated that BNSF should comply with Minnesota Statute 115.061 and notify MPCA. Accordingly, we recommend that a condition be imposed requiring BNSF to consult with MPCA prior to commencement of any salvage activities regarding state regulations for disposal of salvaged materials, as well as oil spills, and to comply with the reasonable requirements thereof. In the event a release is discovered, we recommend that BNSF immediately contact MPCA and SEA.

The U.S. Fish and Wildlife Service (USFWS) Division of Realty reviewed the proposed project and stated that it does not own any lands in the vicinity of the proposed abandonment, and it does not have any concerns regarding real estate matters. USFWS has not submitted comments regarding potential impacts to Federally listed threatened and endangered species. Accordingly, SEA is sending a copy of this EA to USFWS for their review and comment.

The Minnesota Department of Natural Resources (MDNR) submitted comments stating that remnant prairie elements may exist in the proposed project area. Accordingly, we recommend that a condition be imposed requiring BNSF to consult with MDNR regarding potential impacts from salvaging activities to Federally listed threatened and endangered species that may occur in the vicinity of the line. We further recommend that BNSF report the results of this consultation in writing to SEA prior to the onset of salvage operations.

The U.S. Army Corps of Engineers' St. Paul District (Corps) reviewed the proposed project and concluded that no work would be done in a navigable water of the United States and no dredged or fill material would be discharged in any water of the United States, including wetlands. Accordingly, a Corps permit under Section 404 of the Clean Water Act (33 U.S.C. 1344) would not be required. However, the Corps recommended that BNSF contact the Federal Emergency Management Agency (FEMA) regarding floodplain information. Therefore, SEA is sending a copy of this EA to FEMA and MDNR's Floodplain Management Program for their review and comment.

MDNR's Division of Waters has no interest in the proposed abandonment unless it involves filling, excavating, draining or the construction or removal of structures in or over Minnesota Public Waters or Public Waters Wetlands. On March 6, 2006, a representative for BNSF confirmed that the proposed project would not involve any of those activities.

The Natural Resource Conservation Service (NRCS) stated that the proposed abandonment will not impact agricultural lands and a Federal Farmland Policy Protection Act site assessment is not required. However, NRCS noted that, if impacts to wetlands owned or operated by U.S. Department of Agriculture participants are anticipated, BNSF should contact the county Farm Service Agency office (FSA) to consider an application

for a third party exemption.<sup>2</sup> Accordingly, we recommend that BNSF contact the Clay County and Norman County FSA offices prior to commencement of any salvage activities regarding potential impacts to wetlands owned or operated by USDA participants and comply with their reasonable requirements.

According to BNSF, the proposed abandonment will not affect wildlife sanctuaries or refuges, national or state parks or forests. The National Park Service's Midwest Region reviewed the proposed project and had no comments.

The Bureau of Land Management's Milwaukee Field Office (BLM) stated that there are no Federal lands administered by BLM along the line. However, BLM noted that some original railroad grants were limited fee rights-of-way and may be subject to the Railroad Right-of-Way Forfeiture and Abandonment Act. See 43 U.S.C. 912.

BNSF states that its records do not indicate any hazardous waste sites or sites where there have been hazardous material spills on the right-of-way. SEA conducted a search of USEPA's Toxics Release Inventory database at [www.epa.gov/tri/#whatistri](http://www.epa.gov/tri/#whatistri) and the database did not contain any information regarding toxic chemical releases or other waste management activities in the area of the proposed project.

The line is located in a rural area, and the right-of-way is 100 feet wide. According to BNSF, the property may be suitable for other public purposes. The Minnesota Department of Transportation held a meeting with government officials to discuss the proposed abandonment, and it was determined that there was no public use need. However, MDNR's Trails and Waterways Division noted that there are state grant-in-aid snowmobile trails that parallel and cross the line, and it would support an acquisition of the line for recreational trail use.

## **HISTORIC REVIEW**

BNSF submitted an historic report as required by the Board's environmental rules [49 CFR 1105.8(a)] and served the report on the Minnesota Historical Society (the State Historic Preservation Office or SHPO), pursuant to 49 CFR 1105.8(c). There are five bridges located on the line, and BNSF is not aware of any other structures on the line. The bridges were built between 1943 and 1992 and range from 28 feet to 55 feet in length.

The SHPO has submitted comments stating that there is insufficient information to determine whether the line meets the criteria to qualify for the National Register of Historic Places (National Register). Accordingly, we will recommend a condition

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<sup>2</sup> NRCS administers the Wetlands Reserve Program, which is a voluntary program to restore and protect wetlands on private property. See Natural Resources Conservation Service, Wetlands Reserve Program at [www.nrcs.usda.gov/PROGRAMS/wrp/](http://www.nrcs.usda.gov/PROGRAMS/wrp/) (last visited March 6, 2006).

requiring the railroad to retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or listed in the National Register until the Section 106 process has been completed.

SEA conducted a search of the Native American Consultation Database at [www.cast.uark.edu/other/nps/nacd/](http://www.cast.uark.edu/other/nps/nacd/) to identify Federally recognized tribes that may have ancestral connections to the project area. The database indicated that a number of tribes may have an interest in the proposed abandonment. These tribes include the: Flandreau Santee Sioux Tribe of South Dakota; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Lower Sioux Indian Community in the State of Minnesota; Minnesota Chippewa Tribe, Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Upper Sioux Community, Minnesota; White Earth Band of Minnesota Chippewa Tribe, Minnesota; Red Lake Band of Chippewa Indians, Minnesota; and Turtle Mountain Band of Chippewa Indians of North Dakota. Accordingly, SEA is sending a copy of this EA to these tribes for their review and comment.

## **CONDITIONS**

SEA recommends that the following environmental conditions be placed on any decision granting abandonment authority:

1. Prior to commencement of any salvage activities, BNSF Railway Company shall consult with the U.S. Environmental Protection Agency's Region 5 regarding removal and salvage methods.
2. Prior to commencement of any salvage activities, BNSF Railway Company shall contact the Minnesota Pollution Control Agency concerning erosion and stormwater runoff mitigation practices to be utilized during salvage activities.
3. To ensure appropriate consideration of the National Pollutant Discharge Elimination System (NPDES) requirements, BNSF Railway Company shall contact the Minnesota Pollution Control Agency prior to commencement of any salvage activities and comply with the reasonable NPDES requirements.
4. BNSF Railway Company (BNSF) shall contact the Minnesota Pollution Control Agency (MPCA) prior to commencement of any salvage activities regarding state regulations for disposal of salvaged materials, as well as oil spills, and comply with the reasonable requirements thereof. In the event an oil release is discovered, BNSF shall immediately contact MPCA and the Board's Section of Environmental Analysis.
5. BNSF Railway Company shall contact the Clay County and Norman County Farm Service Agency offices prior to commencement of any salvage activities

regarding potential impacts to wetlands owned or operated by U.S. Department of Agriculture participants and shall comply with its reasonable requirements.

6. Prior to commencement of any salvage activities, BNSF Railway Company (BNSF) shall contact the Minnesota Department of Natural Resources regarding potential impacts from salvaging activities to Federally listed threatened and endangered species that may occur in the vicinity of the line. BNSF shall report the results of this consultation in writing to the Board's Section of Environmental Analysis prior to the onset of salvage operations.
7. The BNSF Railroad Company (BNSF) shall retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or listed in the National Register of Historic Places (generally, 50 years old or older) until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed. BNSF shall report back to the Section of Environmental Analysis regarding any consultations with the Minnesota Historical Society (State Historic Preservation Office or SHPO) and any other Section 106 consulting parties. BNSF may not file its consummation notice or initiate any salvage activities related to abandonment until the Section 106 process has been completed and the Board has removed this condition.

## **CONCLUSIONS**

Based on the information provided from all sources to date, SEA concludes that, as currently proposed, and if the recommended conditions are imposed, abandonment of the line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

## **PUBLIC USE**

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

## **TRAILS USE**

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains

jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

### **PUBLIC ASSISTANCE**

The Board's Office of Public Services (OPS) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPS directly at (202) 565-1592, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

### **COMMENTS**

If you wish to file comments regarding this EA, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Christa Dean who prepared this EA. Environmental comments may also be filed electronically on the Board's website, [www.stb.dot.gov](http://www.stb.dot.gov), by clicking on the "E-FILING" link. **Please refer to Docket No. AB-6 (Sub-No. 433X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this EA, please contact Christa Dean the environmental contact for this case, by phone at (202) 565-1606, fax at (202) 565-9000, or e-mail at [deanc@stb.dot.gov](mailto:deanc@stb.dot.gov).

Date made available to the public: March 13, 2006.

**Comment due date: March 28, 2006.**

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams  
Secretary

Attachment